

## § 503.9

otherwise satisfies the requirements of these respective articles. In order to be entitled in such instance to the exemption from withholding of United States tax such beneficiary must otherwise satisfy such requirements and shall, where applicable, execute and submit to the fiduciary of such estate or trust in the United States the appropriate letter of notification prescribed in §§ 503.3(b) and 503.4(b).

### § 503.9 Land Berlin.

The convention shall also apply to Land Berlin effective for taxable years beginning on or after January 1, 1954, but only if the notification has been furnished to the United States Government in accordance with Article XX (2) of the convention. After application of the convention to Land Berlin in accordance with Article XX, references in the convention and in this part to the Federal Republic of Germany shall also be considered references to Land Berlin.

## PARTS 504–507 [RESERVED]

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AUTHORITY: 26 U.S.C. 62, 3791 and 7805.

### Subpart—Withholding of Tax

SOURCE: Treasury Decision 5867, 16 FR 11910, Nov. 27, 1951, unless otherwise noted. Redesignated at 25 FR 14022, Dec. 31, 1960.

EFFECTIVE DATE NOTE: By T.D. 8734, 62 FR 53497, Oct. 14, 1997, Subpart—Withholding of Tax, consisting of §§ 509.1 through 509.10, was removed, effective Jan. 1, 1999. By T.D. 8804, 63 FR 72183, Dec. 31, 1998, the effective date was delayed until Jan. 1, 2000.

### § 509.1 Introductory.

The income tax convention between the United States and the Swiss Confederation, signed May 24, 1951, proclaimed by the President of the United States on October 1, 1951, and effective as to taxable years beginning after December 31, 1950 (referred to in this subpart as the convention), provides in part as follows:

#### ARTICLE I

(1) The taxes referred to in this Convention are:

(a) In the case of the United States of America:

The Federal income taxes, including surtaxes and excess profits taxes.

(b) In the case of The Swiss Confederation:

The federal, cantonal and communal taxes on income (total income, earned income, income from property, industrial and commercial profits, etc.).

(2) The present Convention shall also apply to any other income or profits tax of a substantially similar character imposed by either contracting State subsequently to the date of signature of the present Convention.

## ARTICLE II

(1) As used in this Convention:

(a) The term “United States” means the United States of America, and when used in a geographical sense means the States, the Territories of Alaska and Hawaii, and the District of Columbia.

(b) The term “Switzerland” means The Swiss Confederation.

(c) The term “permanent establishment” means a branch, office, factory, workshop, warehouse or other fixed place of business, but does not include the casual and temporary use of merely storage facilities, nor does it include an agency unless the agent has and habitually exercises a general authority to negotiate and conclude contracts on behalf of an enterprise or has a stock of merchandise from which he regularly fills orders on its behalf. An enterprise of one of the contracting States shall not be deemed to have a permanent establishment in the other State merely because it carries on business dealings in such other State through a commission agent, broker or custodian or other independent agent acting in the ordinary course of his business as such. The fact that an enterprise of one of the contracting States maintains in the other State a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute such fixed place of business a permanent establishment of such enterprise. The fact that a corporation of one contracting State has a subsidiary corporation which is a corporation of the other State or which is engaged in trade or business in the other State shall not of itself constitute that subsidiary corporation a permanent establishment of its parent corporation. The maintenance within the territory of one of the contracting States by an enterprise of the other contracting State of a warehouse for convenience of delivery and not for purposes of display shall not of itself constitute a permanent establishment within that territory even though offers of purchase have been obtained by an agent of the enterprise in that territory and transmitted by him to the enterprise for acceptance.

(d) The term “enterprise of one of the contracting States” means, as the case may be, “United States enterprise” or “Swiss enterprise”.

(e) The term “United States enterprise” means an industrial or commercial enterprise or undertaking carried on in the United States by a resident (including an individual, fiduciary and partnership) of the United States or by a United States corporation or other entity; the term “United States corporation or other entity” means a corporation or other entity created or organized under the law of the United States or of any State or Territory of the United States.

(f) The term “Swiss enterprise” means an industrial or commercial enterprise or undertaking carried on in Switzerland by an individual resident in Switzerland or by a Swiss corporation or other entity; the term “Swiss corporation or other entity” means a corporation or institution or foundation having juridical personality, or a partnership (association “en nom collectif” or “en commandite”), or other association without juridical personality, created or organized under Swiss laws.

(g) The term “competent authorities” means, in the case of the United States, the Commissioner of Internal Revenue as authorized by the Secretary of the Treasury; and in the case of Switzerland, the Director of the Federal Tax Administration as authorized by the Federal Department of Finances and Customs.

(h) The term “industrial or commercial profits” includes manufacturing, mercantile, mining, financial and insurance profits, but does not include income in the form of dividends, interest, rents or royalties, or remuneration for personal services: Provided, however, that such excepted items of income shall, subject to the provisions of this Convention, be taxed separately or together with industrial or commercial profits in accordance with the laws of the contracting States.

(2) In the application of the provisions of the present Convention by one of the contracting States any term not otherwise defined shall, unless the context otherwise requires, have the meaning which such term has under its own tax laws.

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## ARTICLE VI

(1) The rate of tax imposed by one of the contracting States upon dividends derived from sources within such State by a resident or corporation or other entity of the other contracting State not having a permanent establishment in the former State shall not exceed 15 percent: Provided, however, that this paragraph shall have no application to Swiss tax in the case of dividends derived from Switzerland by a Swiss citizen (who is not also a citizen of the United States) resident in the United States.

(2) It is agreed, however, that such rate of tax shall not exceed five percent if the shareholder is a corporation controlling, directly or indirectly, at least 95 percent of the entire voting power in the corporation paying the dividend, and if not more than 25 percent of the gross income of such paying corporation is derived from interest and dividends, other than interest and dividends received from its own subsidiary corporations. Such reduction of the rate to five percent shall not apply if the relationship of the two corporations has been arranged or is maintained primarily

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with the intention of securing such reduced rate.

(3) Switzerland may collect its tax without regard to paragraphs (1) and (2) of this Article but will make refund of the tax so collected in excess of the tax computed at the reduced rates provided in such paragraphs.

### ARTICLE VII

(1) The rate of tax imposed by one of the contracting States on interest on bonds, securities, notes, debentures or on any other form of indebtedness (including mortgages or bonds secured by real property) derived from sources within such contracting State by a resident or corporation or other entity of the other contracting State not having a permanent establishment in the former State shall not exceed five percent: Provided, however, that this paragraph shall have no application to Swiss tax in the case of interest derived from Switzerland by a Swiss citizen (who is not also a citizen of the United States) resident in the United States.

(2) Switzerland may collect its tax without regard to paragraph (1) of this Article but will make refund of the tax so collected in excess of the tax computed at the reduced rate provided in such paragraph.

### ARTICLE VIII

Royalties and other amounts derived, as consideration for the right to use copyrights, artistic and scientific works, patents, designs, plans, secret processes and formulae, trademarks, and other like property and rights (including rentals and like payments in respect to motion picture films or for the use of industrial, commercial or scientific equipment), from sources within one of the contracting States by a resident or corporation or other entity of the other contracting State not having a permanent establishment in the former State shall be exempt from taxation in such former State.

### ARTICLE IX

(1) Income from real property (including gains derived from the sale or exchange of such property but not including interest from mortgages or bonds secured by real property) and royalties in respect of the operation of mines, quarries, or other natural resources, shall be taxable only in the contracting State in which such property, mines, quarries, or other natural resources are situated.

(2) A resident or corporation or other entity of one of the contracting States deriving any such income from such property within the other contracting State may, for any taxable year, elect to be subject to the tax of such other contracting State, on a net basis, as if such resident or corporation or entity were engaged in trade or business within such other contracting States through a per-

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manent establishment therein during such taxable year.

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### ARTICLE XI

(2) Private pensions and life annuities derived from within one of the contracting States and paid to individuals residing in the other contracting State shall be exempt from taxation in the former State.

(3) The term "pensions", as used in this Article, means periodic payments made in consideration for services rendered or by way of compensation for injuries received.

(4) The term "life annuities" as used in this Article, means a stated sum payable periodically at stated times during life, or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

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### ARTICLE XIV

(1) Dividends and interest paid by a corporation other than a United States domestic corporation shall be exempt from United States tax where the recipient is a non-resident alien as to the United States resident in Switzerland or a Swiss corporation, not having a permanent establishment in the United States.

(2) Dividends and interest paid by a corporation other than a Swiss corporation shall be exempt from Swiss tax where the recipient is a resident or corporation of the United States, not having a permanent establishment in Switzerland.

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### ARTICLE XVI

(1) The competent authorities of the contracting States shall exchange such information (being information available under the respective taxation laws of the contracting States) as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or the like in relation to the taxes which are the subject of the present Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any person other than those concerned with the assessment and collection of the taxes which are the subject of the present Convention. No information shall be exchanged which would disclose any trade, business, industrial or professional secret or any trade process.

(2) Each of the contracting States may collect such taxes imposed by the other contracting State as though such taxes were the taxes of the former State as will ensure that

the exemption or reduced rate of tax granted under Articles VI, VII, VIII and XI(2) of the present Convention by such other State shall not be enjoyed by persons not entitled to such benefits.

(3) In no case shall the provisions of this Article be construed so as to impose upon either of the contracting States the obligation to carry out administrative measures at variance with the regulations and practice of either contracting State or which would be contrary to its sovereignty, security or public policy or to supply particulars which are not procurable under its own legislation or that of the State making application.

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#### ARTICLE XIX

(1) The competent authorities of the two contracting States may prescribe regulations necessary to carry into effect the present Convention within the respective States.

(2) The competent authorities of the two contracting States may communicate with each other directly for the purpose of giving effect to the provisions of this Convention.

#### ARTICLE XX

(1) The present Convention shall be ratified and the instruments of ratification shall be exchanged at Berne as soon as possible. It shall have effect for the taxable years beginning on or after the first day of January of the year in which such exchange takes place: Provided, however, that if such exchange takes place on or after October 1 of such year, Article VI (except paragraph (2) thereof) and Article VII of the Convention shall have effect only for taxable years beginning on or after the first day of January of the year immediately following the year in which such exchange takes place.

(2) The present Convention shall continue effective for a period of five years beginning with the calendar year in which the exchange of the instruments of ratification takes place and indefinitely after that period, but may be terminated by either of the contracting States at the end of the five-year period or at any time thereafter, provided that at least six months' prior notice of termination has been given and, in such event, the present Convention shall cease to be effective for the taxable years beginning on or after the first day of January next following the expiration of the six-month period.

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As used in this Treasury decision, unless the context otherwise requires, the terms defined in the above articles of

the convention shall have the meanings so assigned them.

#### § 509.2 Dividends.

(a) *General.* Under Article VI of the convention, the rate of tax imposed with respect to dividends by section 211(a) of the Internal Revenue Code (relating to nonresident alien individuals not engaged in trade or business within the United States) and by section 231(a) of the Internal Revenue Code (relating to foreign corporations not engaged in trade or business within the United States) is reduced to 15 percent in the case of dividends received in taxable years beginning on or after January 1, 1951, from sources within the United States by a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) who is a resident of Switzerland or by a Swiss corporation if such alien or corporation at no time during the taxable year had a permanent establishment within the United States. As to what is a Swiss corporation (see Article II(1)(f) of the convention. Thus, if a nonresident alien who is a resident of Switzerland performs personal services within the United States during the calendar year 1952, but has at no time during such year a permanent establishment within the United States, he is entitled to the reduced rate of tax with respect to dividends derived in that year from United States sources, as provided in Article VI of the convention, even though, by reason of his having rendered personal services within the United States, he is engaged in trade or business therein in that year within the meaning of section 211(b) of the Internal Revenue Code. As to what constitutes a permanent establishment, see Article II(1)(c) of the convention.

In the case of dividends paid on or after January 1, 1951, by any foreign corporation to a nonresident alien who is a resident of Switzerland or to a Swiss corporation, not having a permanent establishment in the United States, no withholding of United States tax is required. See Article XIV of the convention.

(b) *Dividends paid by a United States subsidiary corporation.* Under the provisions of Article VI(2) of the convention, dividends from sources within the

United States paid by a domestic corporation to a Swiss corporation controlling, directly or indirectly, at the time the dividend is paid, 95 percent or more of the entire voting power in such domestic corporation are, when received in taxable years beginning on or after January 1, 1951, subject to tax at the rate of only 5 percent, if (1) not more than 25 percent of the gross income of such paying corporation for the three-year period immediately preceding the taxable year in which the dividend is paid consists of dividends and interest (other than dividends and interest paid to such domestic corporation by its own subsidiary corporations, if any), (2) the relationship between such domestic corporation and such Swiss corporation has not been arranged or maintained primarily with the intention of securing such reduced rate of 5 percent, and (3) such Swiss corporation at no time during the taxable year had a permanent establishment within the United States.

Any domestic corporation which claims or contemplates claiming that dividends paid or to be paid by it on or after January 1, 1951, are subject only to the 5 percent rate shall file, as soon as practicable, with the Commissioner of Internal Revenue, the following information: (1) The date and place of its organization; (2) the number of outstanding shares of stock of the domestic corporation having voting power and the voting power thereof; (3) the person or persons beneficially owning such stock of the domestic corporation and their relationship to the Swiss corporation; (4) the amount of gross income, by years, of the paying corporation for the three-year period immediately preceding the taxable year in which the dividend is paid; (5) the amount of interest and dividends, by years, included in the gross income of such domestic corporation and the amount of interest and dividends, by years, received by such corporation from its subsidiary corporations, if any; and (6) the relationship between the domestic corporation and the Swiss corporation to which it pays the dividends.

As soon as practicable after such information is filed, the Commissioner of Internal Revenue will determine

whether the dividends concerned fall within the provisions of Article VI(2) of the convention and may authorize the release of excess tax withheld with respect to dividends which come within such provisions. In any case in which the Commissioner of Internal Revenue has notified such domestic corporation that the dividends come within such provisions, the reduced withholding rate of 5 percent will apply to any dividends subsequently paid by such corporation to the Swiss corporation unless the stock ownership of the domestic corporation, or the character of its income, materially changes, or unless the Commissioner of Internal Revenue determines that the relationship between the two corporations is being maintained primarily with the intention of securing such reduced rate; and, if such change in stock ownership or character of income occurs, such corporation shall promptly notify the Commissioner of Internal Revenue of the then existing facts with respect to such stock ownership or income.

(c) *Effect of address in Switzerland on withholding in case of dividends.* For the purpose of withholding of the tax in the case of dividends, every nonresident alien (including a nonresident alien individual, fiduciary, and partnership) whose address is in Switzerland shall be deemed by United States withholding agents to be a resident of Switzerland not having a permanent establishment in the United States; and every corporation whose address is in Switzerland shall be deemed by such withholding agents to be a Swiss corporation not having a permanent establishment in the United States.

(d) *Rate of withholding.* On and after January 1, 1951, withholding in the case of dividends paid to nonresident aliens (including a nonresident alien individual, fiduciary, and partnership) and to foreign corporations, whose addresses are in Switzerland, shall be at the rate of 15 percent in every case except (1) that in which, prior to the date of payment of such dividends, the Commissioner of Internal Revenue has notified the paying corporation that such dividends fall within the provisions of Article VI (2) of the convention and (2) that in which the Commissioner of Internal Revenue has, prior to the date of

payment of such dividends, notified the withholding agent that the reduced rate of tax shall not apply.

The preceding provisions relative to residents of Switzerland and to Swiss corporations are based upon the assumption that the payee of the dividend is the actual owner of the capital stock from which the dividend is derived and consequently is the person liable to the tax upon such dividend. As to action by the recipient who is not the owner of the dividend, see § 509.8.

### § 509.3 Interest.

(a) *General.* Interest on bonds, securities, notes, debentures, or any other form of indebtedness (including interest on obligations of the United States, obligations of instrumentalities of the United States, and mortgages and bonds secured by real property) received in taxable years beginning on or after January 1, 1951, from sources within the United States by a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) who is a resident of Switzerland, or by a Swiss corporation, is subject to United States tax at the reduced rate of 5 percent under the provisions of Article VII of the convention if such alien or corporation at no time during the taxable year had a permanent establishment in the United States.

(b) *Application of reduced rate at source.* To secure the reduced rate of tax at the source in the case of coupon bond interest, the nonresident alien resident in Switzerland or the Swiss corporation shall submit Form 1001-S, in duplicate, to the paying agent with each presentation of interest coupons. Such form shall be signed by the owner of the interest, trustee, or agent and shall show the name and address of the obligor, the name and address of the owner of such interest, and the amount of such interest. Such form shall contain a statement that the owner is a resident of Switzerland or a Swiss corporation and that such owner has no permanent establishment in the United States.

The reduction in the rate of United States tax contemplated by Article VII of the convention, insofar as it concerns coupon bond interest, is applica-

ble only to the owner of such interest. The person presenting such coupon or on whose behalf it is presented shall, for the purpose of the reduction, be deemed to be the owner of the interest only if he is, at the time the coupon is presented for payment, the owner of the bond from which the coupon has been detached. If the person presenting the coupon is not the owner of the bond, Form 1001, and not Form 1001-S, shall be executed.

The original and duplicate ownership certificates, Form 1001-S, must be forwarded to the Commissioner of Internal Revenue by the withholding agent with the quarterly return, Form 1012, as provided in existing regulations with respect to Form 1001. See § 29.143-7 of Regulations 111 (26 CFR 1949 ed. Supps. 29.143-7) [and § 39.143-7 of Regulations 118 (26 CFR, Rev. 1953, Parts 1-79, and Supps.)]. Form 1001-S need not be listed on Form 1012.

In the case of interest coupons presented in Switzerland by a nonresident alien who is not a resident of Switzerland, or by a foreign corporation other than a Swiss corporation, ownership certificates, Form 1001, shall be filed as provided in existing regulations without reference to the provisions of the convention. See § 29.143-4 of Regulations 111 (26 CFR 1949 ed. Supps. 29.143-4) [and § 39.143-4 of Regulations 118 (26 CFR, Rev. 1953, Parts 1-79, and Supps.)].

To secure the reduced rate of tax at the source in the case of interest, other than interest payable by means of coupons, the nonresident alien who is a resident of Switzerland or the Swiss corporation shall file Form 1001A-S, in duplicate, with the withholding agent in the United States. Such form shall be signed by the owner of the interest, trustee, or agent and shall show the name and address of the obligor and the name and address of the owner of such interest. Such form shall contain a statement that the owner is a resident of Switzerland, or is a Swiss corporation, not having a permanent establishment in the United States.

Form 1001A-S must be filed for each three-calendar-year period, and the first such form filed by the taxpayer with any withholding agent shall be filed not later than 20 days preceding

the date of the first payment of income in such period. If the taxpayer files such form with the withholding agent in the calendar year 1951, or in any subsequent calendar year, no additional Form 1001A-S need be filed prior to the end of the two calendar years immediately following the calendar year in which such form is so filed unless the Commissioner of Internal Revenue notifies the withholding agent that an additional Form 1001A-S must be filed by the taxpayer at any earlier date. If, after filing such form, the taxpayer ceases to be eligible for the benefit of the convention, he must promptly notify the withholding agent. When any change occurs in the ownership of record of the income on the books of the payor, the reduction in the rate of United States tax will no longer apply unless Form 1001A-S is duly executed and filed with the payor by the new owner of record of such income.

The duplicate of Form 1001A-S must be immediately forwarded by the withholding agent to the Commissioner of Internal Revenue, Records Division, Washington 25, D.C.

In the case of interest paid on or after January 1, 1951, by any foreign corporation to a nonresident alien who is a resident of Switzerland or to a Swiss corporation, not having a permanent establishment in the United States, no withholding of United States tax is required. See Article XIV of the convention.

**§ 509.4 Patent and copyright royalties and film rentals.**

Royalties and other amounts received in taxable years beginning on or after January 1, 1951, from sources within the United States by a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) who is a resident of Switzerland or by a Swiss corporation, as consideration for the right to use copyrights, artistic and scientific works, patents, designs, plans, secret processes and formulae, trade-marks, and other like property and rights (including rentals and like payments in respect to motion picture films or for the use of industrial, commercial, or scientific equipment), are exempt from United States tax under the provisions

of Article VIII of the convention if such alien or corporation at no time during the taxable year in which such royalties or other amounts are received has had a permanent establishment within the United States. Such items are therefore not subject to the withholding provisions of the Internal Revenue Code. As to what constitutes a permanent establishment, see Article II(1)(c) of the convention.

To obviate withholding at the source in the case of such items, the nonresident alien who is a resident of Switzerland or the Swiss corporation shall file Form 1001A-S, in duplicate, with the withholding agent in the United States. The provisions of § 509.3(b) relating to the execution and effective period of such form with respect to interest are equally applicable with respect to the income falling within the scope of this section.

The duplicate of Form 1001A-S must be immediately forwarded by the withholding agent to the Commissioner of Internal Revenue, Records Division, Washington, D.C.

**§ 509.5 Pensions and life annuities.**

Article XI(2) of the convention provides that private pensions and life annuities derived in taxable years beginning on or after January 1, 1951, from sources within the United States by a nonresident alien individual who is a resident of Switzerland shall be exempt from United States tax.

The person paying such income shall be notified by letter from the resident of Switzerland that the income is exempt from taxation under the provisions of Article XI (2) and (3) or XI (2) and (4), as the case may be, of the convention. Such letter shall contain the address of the individual and a statement that such individual is a resident of Switzerland. The letter of notification, or a copy thereof, shall be immediately forwarded by the recipient to the Commissioner of Internal Revenue, Records Division, Washington, D.C. Such letter shall constitute authorization to the payor of the income to pay such income without deduction of the tax at the source unless the Commissioner subsequently notifies such payor that the tax should be withheld with

respect to payments made after such notification.

**§ 509.6 Natural resource royalties and real property rentals.**

The convention does not change the rate of tax imposed under existing law upon natural resource royalties and real property rentals. The withholding of the tax with respect to such items derived from sources within the United States by nonresident aliens who are residents of Switzerland and by Swiss corporations is not affected by the convention. See sections 211(a) and 231(a) of the Internal Code and Article IX of the convention.

**§ 509.7 Release of excess tax withheld at source.**

(a) *General.* In order to bring the convention into force and effect at the earliest practicable date, (1) the reduced rate of tax of 15 percent to be withheld at the source on dividends, (2) the reduced rate of tax of 5 percent to be withheld at the source on interest, and (3) the exemption from tax otherwise withheld at the source on patent royalties, copyright royalties, film rentals, and the like, are hereby made effective beginning January 1, 1951, in any case in which such dividends, interest, patent royalties, copyright royalties, film rentals, and the like, are derived from sources within the United States by a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) who is a resident of Switzerland or by a Swiss corporation.

In the case of every such taxpayer who furnishes to the withholding agent Form 1001A-S, as prescribed in § 509.3(b) or § 509.4, where tax at the rate of 30 percent has been withheld on or after January 1, 1951, there shall be released by the withholding agent and paid over to the person from whom withheld (1) in the case of interest (other than coupon bond interest), an amount equal to 25 percent of such interest, and (2) in the case of patent royalties, copyright royalties, film rentals, and the like, an amount equal to the tax so withheld.

In the case of every such taxpayer who furnishes to the withholding agent Form 1001-S, in duplicate, where tax at the rate of 28 percent or 30 percent, as the case may be, has been withheld on

or after January 1, 1951, from coupon bond interest, there shall be released by the withholding agent and paid over to the person from whom it was withheld an amount equal to 25 percent of such interest. Form 1001-S, clearly marked "Substitute" in order to replace any Forms 1001 previously filed, is to be used solely for such release of excess tax withheld in 1951. One Form 1001-S, in duplicate, may be used to replace two or more Forms 1001 previously filed in such year. The use of Form 1001-S with each presentation of interest coupons for the purpose of securing the reduced rate of tax is set forth in § 509.3(b).

In the case of dividends paid to a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) whose address at the time of payment was in Switzerland, or to a Swiss corporation whose address at the time of payment was in Switzerland, where tax at the rate of 30 percent has been withheld on or after January 1, 1951, from such dividends, there shall be released by the withholding agent and paid over to the person from whom it was withheld an amount equal to 15 percent of such dividends.

(b) *Private pensions and life annuities paid in 1951 or subsequent years.* In order to bring the convention into force and effect at the earliest practicable date, the exemption from tax otherwise withheld at the source on private pensions and life annuities is hereby made effective beginning January 1, 1951, in any case in which such pensions and life annuities are derived from sources within the United States by a nonresident alien individual who is a resident of Switzerland.

The person paying such income shall be notified by letter from the resident of Switzerland that the income is exempt from taxation under the provisions of Article XI (2) and (3), or XI (2) and (4), as the case may be, of the convention. See § 509.5. Such letter shall constitute authorization to the payer of such income, where tax at the rate of 30 percent has been withheld on or after January 1, 1951, to release and pay over to the person from whom it was withheld an amount equal to the tax so withheld.



(c) *Subsidiary's dividends.* With respect to a dividend paid on or after January 1, 1951, by a domestic corporation to a Swiss corporation whose address is in Switzerland, tax shall be withheld in accordance with the provisions of § 509.2 unless prior to the date of payment of such dividend the Commissioner of Internal Revenue has notified the paying corporation that such dividend falls within the scope of Article VI(2) of the convention. As soon as practicable after information required under § 509.2(b) is filed, the Commissioner of Internal Revenue will determine whether the dividend involved falls within the scope of Article VI(2) and may authorize the release of the excess tax withheld with respect to dividends which come within the scope of such provision.

**§ 509.8 Addressee not actual owner.**

If the first recipient with an address in Switzerland of any dividend from sources within the United States is a nominee or representative through whom the dividend flows to a third person, such recipient in Switzerland will withhold an additional amount of United States tax equivalent to the difference between the United States tax which would have been withheld had the convention not been in effect (30 percent as at the date of approval of this Treasury decision) and the 15 percent withheld at the source with respect to such dividend pursuant to § 509.2(d).

In any case in which a fiduciary or a partnership with an address in Switzerland receives, otherwise than as a nominee or representative, a dividend from United States sources, if a beneficiary of such fiduciary or a partner in such partnership is not entitled to the reduced rate of tax provided in Article VI of the convention, the fiduciary or partnership will withhold an additional amount of United States tax with respect to the portion of such dividend included in such beneficiary's or partner's net distributive share of the income of such fiduciary or partnership, as the case may be. The amount of the additional tax is to be calculated in the same manner as under the preceding paragraph.

The amounts so withheld by such withholding agents in Switzerland, as well as the amount of tax released with respect to the calendar year 1951 by the withholding agent in the United States in the case of a dividend flowing to a third person through a nominee or representative whose address is in Switzerland, will be deposited by such agents in Swiss francs with the Federal Tax Administration, Berne, Switzerland, Account: "Zusätzlicher Steuerrückbehalt USA" ("Additional tax withholdings USA"); and the appropriate Swiss form will be filed therewith. The Federal Tax Administration has arranged that the amounts so deposited will, after adjustment for tax refunded to persons entitled to the reduced rate of 15 percent, be periodically remitted by draft in United States dollars to the Collector of Internal Revenue, Baltimore, Maryland, U.S.A.

**§ 509.9 Return of tax withheld and information return with respect to persons whose addresses are in Switzerland.**

Every United States withholding agent shall make and file with the collector, in duplicate, an information return on Form 1042F, in addition to the withholding return, Form 1042, for the calendar year 1951 and each subsequent calendar year, with respect to:

(a) Dividends from which a tax of 15 percent was withheld from persons whose addresses are in Switzerland (5 percent in the case of dividends falling within the scope of the provisions of Article VI(2) of the Convention);

(b) Interest (other than coupon bond interest reported on Form 1001-S) from which a tax of 5 percent was withheld from persons who have furnished to the withholding agent Form 1001A-S;

(c) Royalties and like amounts from which no tax was withheld from persons who have furnished to the withholding agent Form 1001A-S; and

(d) All other fixed or determinable annual or periodical income paid to such persons.

**§ 509.10 Beneficiaries of a domestic estate or trust.**

A nonresident alien who is a resident of Switzerland and who is a beneficiary

of a domestic estate or trust shall be entitled to the exemption from tax, or reduction in the rate of tax, as the case may be, provided in Articles VI, VII, and VIII of the convention with respect to dividends, interest, and royalties to the extent such item or items are included in his distributive share of the income of such estate or trust. In such case such beneficiary must, in order to be entitled to the exemption from, or reduction in the rate of, tax in the case of interest or royalties, execute Form 1001A-S and file such form with the fiduciary of such estate or trust in the United States.

### Subpart—General Income Tax

SOURCE: Treasury Decision 6149, 20 FR 7587, Oct. 12, 1955; 25 FR 14022, Dec. 31, 1960, unless otherwise noted.

#### § 509.101 Introductory.

The income tax convention between the United States and the Swiss Confederation, signed May 24, 1951, and proclaimed by the President of the United States on October 1, 1951, subject to the understanding expressed in the protocol of exchange, referred to in this part as the convention, provides as follows, effective for taxable years beginning on or after January 1, 1951:

##### ARTICLE I

(1) The taxes referred to in this Convention are:

(a) In the case of the United States of America: The Federal income taxes, including surtaxes and excess profits taxes.

(b) In the case of The Swiss Confederation: The federal, cantonal and communal taxes on income (total income, earned income, income from property, industrial and commercial profits, etc.).

(2) The present Convention shall also apply to any other income or profits tax of a substantially similar character imposed by either contracting State subsequently to the date of signature of the present Convention.

##### ARTICLE II

(1) As used in this Convention:

(a) The term "United States" means the United States of America, and when used in a geographical sense means the States, the Territories of Alaska and Hawaii, and the District of Columbia.

(b) The term "Switzerland" means The Swiss Confederation.

(c) The term "permanent establishment" means a branch, office, factory, workshop, warehouse or other fixed place of business, but does not include the casual and temporary use of merely storage facilities, nor does it include an agency unless the agent has and habitually exercises a general authority to negotiate and conclude contracts on behalf of an enterprise or has a stock of merchandise from which he regularly fills orders on its behalf. An enterprise of one of the contracting States shall not be deemed to have a permanent establishment in the other State merely because it carries on business dealings in such other State through a commission agent, broker or custodian or other independent agent acting in the ordinary course of his business as such. The fact that an enterprise of one of the contracting States maintains in the other State a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute such fixed place of business a permanent establishment of such enterprise. The fact that a corporation of one contracting State has a subsidiary corporation which is a corporation of the other State or which is engaged in trade or business in the other State shall not of itself constitute that subsidiary corporation a permanent establishment of its parent corporation. The maintenance within the territory of one of the contracting States by an enterprise of the other contracting State of a warehouse for convenience of delivery and not for purposes of display shall not of itself constitute a permanent establishment within that territory even though offers of purchase have been obtained by an agent of the enterprise in that territory and transmitted by him to the enterprise for acceptance.

(d) The term "enterprise of one of the contracting States" means, as the case may be, "United States enterprise" or "Swiss enterprise".

(e) The term "United States enterprise" means an industrial or commercial enterprise or undertaking carried on in the United States by a resident (including an individual, fiduciary and partnership) of the United States or by a United States corporation or other entity; the term "United States corporation or other entity" means a corporation or other entity created or organized under the law of the United States or of any State or Territory of the United States.

(f) The term "Swiss enterprise" means an industrial or commercial enterprise or undertaking carried on in Switzerland by an individual resident in Switzerland or by a Swiss corporation or other entity; the term "Swiss corporation or other entity" means a corporation or institution or foundation having juridical personality, or a partnership (association "en nom collectif" or "en commandite"), or other association without

juridical personality, created or organized under Swiss laws.

(g) The term “competent authorities” means, in the case of the United States, the Commissioner of Internal Revenue as authorized by the Secretary of the Treasury; and in the case of Switzerland, the Director of the Federal Tax Administration as authorized by the Federal Department of Finances and Customs.

(h) The term “industrial or commercial profits” includes manufacturing, mercantile, mining, financial and insurance profits, but does not include income in the form of dividends, interest, rents or royalties, or remuneration for personal services: Provided, however, that such excepted items of income shall, subject to the provisions of this Convention, be taxed separately or together with industrial or commercial profits in accordance with the laws of the contracting States.

(2) In the application of the provisions of the present Convention by one of the contracting States any term not otherwise defined shall, unless the context otherwise requires, have the meaning which such term has under its own tax laws.

#### ARTICLE III

(1)(a) A Swiss enterprise shall not be subject to taxation by the United States in respect of its industrial and commercial profits unless it is engaged in trade or business in the United States through a permanent establishment situated therein. If it is so engaged the United States may impose its tax upon the entire income of such enterprise from sources within the United States.

(b) A United States enterprise shall not be subject to taxation by Switzerland in respect of its industrial and commercial profits except as to such profits allocable to its permanent establishment situated in Switzerland.

(2) No account shall be taken in determining the tax in one of the contracting States of the mere purchase of merchandise therein by an enterprise of the other State.

(3) Where an enterprise of one of the contracting States is engaged in trade or business in the territory of the other contracting State through a permanent establishment situated therein, there shall be attributed to such permanent establishment the industrial or commercial profits which it might be expected to derive if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.

(4) In the determination of the industrial or commercial profits of the permanent establishment there shall be allowed as deductions all expenses which are reasonably applicable to the permanent establishment, including executive and general administrative expenses so applicable.

(5) The competent authorities of the two contracting States may lay down rules by agreement for the apportionment of industrial and commercial profits.

#### ARTICLE IV

Where an enterprise of one of the contracting States, by reason of its participation in the management or the financial structure of an enterprise of the other contracting State, makes with or imposes on the latter, in their commercial or financial relations, conditions different from those which would be made with an independent enterprise, any profits which would normally have accrued to one of the enterprises, but by reason of those conditions have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

#### ARTICLE V

Income which an enterprise of one of the contracting States derives from the operation of ships or aircraft registered in that State shall be taxable only in the State in which such ships or aircraft are registered.

#### ARTICLE VI

(1) The rate of tax imposed by one of the contracting States upon dividends derived from sources within such State by a resident or corporation or other entity of the other contracting State not having a permanent establishment in the former State shall not exceed 15 percent: Provided, however, that this paragraph shall have no application to Swiss tax in the case of dividends derived from Switzerland by a Swiss citizen (who is not also a citizen of the United States) resident in the United States.

(2) It is agreed, however, that such rate of tax shall not exceed five percent if the shareholder is a corporation controlling, directly or indirectly, at least 95 percent of the entire voting power in the corporation paying the dividend, and if not more than 25 percent of the gross income of such paying corporation is derived from interest and dividends, other than interest and dividends received from its own subsidiary corporations. Such reduction of the rate to five percent shall not apply if the relationship of the two corporations has been arranged or is maintained primarily with the intention of securing such reduced rate.

(2) Switzerland may collect its tax without regard to paragraphs (1) and (2) of this Article but will make refund of the tax so collected in excess of the tax computed at the reduced rates provided in such paragraphs.

#### ARTICLE VII

(1) The rate of tax imposed by one of the contracting States on interest on bonds, securities, notes, debentures or on any other form of indebtedness (including mortgages or

bonds secured by real property) derived from sources within such contracting State by a resident or corporation or other entity of the other contracting State not having a permanent establishment in the former State shall not exceed five percent: Provided, however, that this paragraph shall have no application to Swiss tax in the case of interest derived from Switzerland by a Swiss citizen (who is not also a citizen of the United States) resident in the United States.

(2) Switzerland may collect its tax without regard to paragraph (1) of this Article but will make refund of the tax so collected in excess of the tax computed at the reduced rate provided in such paragraph.

#### ARTICLE VIII

Royalties and other amounts derived, as consideration for the right to use copyrights, artistic and scientific works, patents, designs, plans, secret processes and formulae, trademarks, and other like property and rights (including rentals and like payments in respect to motion picture films or for the use of industrial, commercial or scientific equipment), from sources within one of the contracting States by a resident or corporation or other entity of the other contracting State not having a permanent establishment in the former State shall be exempt from taxation in such former State.

#### ARTICLE IX

(1) Income from real property (including gains derived from the sale or exchange of such property but not including interest from mortgages or bonds secured by real property) and royalties in respect of the operation of mines, quarries, or other natural resources, shall be taxable only in the contracting State in which such property, mines, quarries, or other natural resources are situated.

(2) A resident or corporation or other entity of one of the contracting States deriving any such income from such property within the other contracting State may, for any taxable year, elect to be subject to the tax of such other contracting State, on a net basis, as if such resident or corporation or entity were engaged in trade or business within such other contracting State through a permanent establishment therein during such taxable year.

#### ARTICLE X

(1) An individual resident of Switzerland shall be exempt from United States tax upon compensation for labor or personal services performed in the United States (including the practice of the liberal professions and rendition of services as director) if he is temporarily present in the United States for a period or periods not exceeding a total of 188

days during the taxable year and either of the following conditions is met:

(a) His compensation is received for such labor or personal services performed as an employee of, or under contract with, a resident or corporation or other entity of Switzerland, or

(b) His compensation received for such labor or personal services does not exceed \$10,000.

(2) The provisions of paragraph (1) of this Article shall apply *mutatis mutandis*, to an individual resident of the United States with respect to compensation for such labor or personal services performed in Switzerland.

(3) The provisions of this Article shall have no application to the income to which Article XI (1) relates.

(4) The provisions of paragraph (1)(a) of this Article shall not apply to the compensation, profits, emoluments or other remuneration of public entertainers such as stage, motion picture or radio artists, musicians and athletes.

#### ARTICLE XI

(1)(a) Wages, salaries and similar compensation, and pensions paid by the United States or by the political subdivisions or territories thereof to an individual (other than a Swiss citizen who is not also a citizen of the United States) shall be exempt from Swiss tax.

(b) Wages, salaries and similar compensation and pensions paid by Switzerland or by any agency or instrumentality thereof or by any political subdivisions or other public authorities thereof to an individual (other than a United States citizen who is not also a citizen of Switzerland) shall be exempt from United States tax.

(2) Private pensions and life annuities derived from within one of the contracting States and paid to individuals residing in the other contracting State shall be exempt from taxation in the former State.

(3) The term "pensions", as used in this Article, means periodic payments made in consideration for services rendered or by way of compensation for injuries received.

(4) The term "life annuities" as used in this Article, means a stated sum payable periodically at stated times during life, or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

#### ARTICLE XII

A professor or teacher, a resident of one of the contracting States, who temporarily visits the other contracting State for the purpose of teaching for a period not exceeding two years at a university, college, school or other educational institution in the other contracting State, shall be exempted in such

other contracting State from tax on his remuneration for such teaching for such period.

#### ARTICLE XIII

A student or apprentice, a resident of one of the contracting States, who temporarily visits the other contracting State exclusively for the purposes of study or for acquiring business or technical experience shall not be taxable in the latter State in respect of remittances received by him from abroad for the purposes of his maintenance or studies.

#### ARTICLE XIV

(1) Dividends and interest paid by a corporation other than a United States domestic corporation shall be exempt from United States tax where the recipient is a non-resident alien as to the United States resident in Switzerland or a Swiss corporation, not having a permanent establishment in the United States.

(2) Dividends and interest paid by a corporation other than a Swiss corporation shall be exempt from Swiss tax where the recipient is a resident or corporation of the United States, not having a permanent establishment in Switzerland.

#### ARTICLE XV

(1) It is agreed that double taxation shall be avoided in the following manner:

(a) The United States in determining its taxes specified in Article I of this Convention in the case of its citizens, residents or corporations may, regardless of any other provision of this Convention, include in the basis upon which such taxes are imposed all items of income taxable under the revenue laws of the United States as if this Convention had not come into effect. The United States shall, however, subject to the provisions of section 131, Internal Revenue Code, as in effect on the date of the entry into force of this Convention, deduct from its taxes the amount of Swiss taxes specified in Article I of this Convention. It is agreed that by virtue of the provisions of subparagraph (b) of this paragraph, Switzerland satisfies the similar credit requirement set forth in section 131(a)(3), Internal Revenue Code.

(b) Switzerland, in determining its taxes specified in Article I of this Convention in the case of its residents, corporations or other entities, shall exclude from the basis upon which such taxes are imposed such items of income as are dealt with in this Convention, derived from the United States and not exempt from, and not entitled to the reduced rate of, United States tax under this Convention; but in the case of a citizen of the United States resident in Switzerland there shall be excluded all items of income derived from the United States. Switzerland,

however, reserves the right to take into account in the determination of the rate of its taxes also the income excluded as provided in this paragraph.

(2) The provisions of this Article shall not be construed to deny the exemptions from United States tax or Swiss tax, as the case may be, granted by Article XI (1) of this Convention.

#### ARTICLE XVI

(1) The competent authorities of the contracting States shall exchange such information (being information available under the respective taxation laws of the contracting States) as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or the like in relation to the taxes which are the subject of the present Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any person other than those concerned with the assessment and collection of the taxes which are the subject of the present Convention. No information shall be exchanged which would disclose any trade, business, industrial or professional secret or any trade process.

(2) Each of the contracting States may collect such taxes imposed by the other contracting State as though such taxes were the taxes of the former State as will ensure that the exemption or reduced rate of tax granted under Articles VI, VII, VIII and XI(2) of the present Convention by such other State shall not be enjoyed by persons not entitled to such benefits.

(3) In no case shall the provisions of this Article be construed so as to impose upon either of the contracting States the obligation to carry out administrative measures at variance with the regulations and practice of either contracting State or which would be contrary to its sovereignty, security or public policy or to supply particulars which are not procurable under its own legislation or that of the State making application.

#### ARTICLE XVII

(1) Where a taxpayer shows proof that the action of the tax authorities of the contracting States has resulted, or will result, in double taxation contrary to the provisions of the present Convention, he shall be entitled to present the facts to the State of which he is a citizen or a resident, or, if the taxpayer is a corporation or other entity, to the State in which it is created or organized. Should the taxpayer's claim be deemed worthy of consideration, the competent authority of such State shall undertake to come to an agreement with the competent authority of the other State with a view to equitable avoidance of the double taxation in question.

(2) Should any difficulty or doubt arise as to the interpretation or application of the

present Convention, or its relationship to Conventions between one of the contracting States and any other State, the competent authorities of the contracting States may settle the question by mutual agreement.

## ARTICLE XVIII

(1) The provisions of this Convention shall not be construed to deny or affect in any manner the right of diplomatic and consular officers to other or additional exemptions now enjoyed or which may hereafter be granted to such officers.

(2) The provisions of the present Convention shall not be construed to restrict in any manner any exemption, deduction, credit or other allowance now or hereafter accorded by the laws of one of the contracting States in the determination of the tax imposed by such State.

(3) The citizens of one of the contracting States shall not, while resident in the other contracting State, be subjected therein to other or more burdensome taxes than are the citizens of such other contracting State residing in its territory. The term "citizens" as used in this Article includes all legal persons, partnerships and associations created or organized under the laws in force in the respective contracting States. In this Article the word "taxes" means taxes of every kind or description, whether Federal, State, cantonal, municipal or communal.

## ARTICLE XIX

(1) The competent authorities of the two contracting States may prescribe regulations necessary to carry into effect the present Convention within the respective States.

(2) The competent authorities of the two contracting States may communicate with each other directly for the purpose of giving effect to the provisions of this Convention.

## ARTICLE XX

(1) The present Convention shall be ratified and the instruments of ratification shall be exchanged at Berne as soon as possible. It shall have effect for the taxable years beginning on or after the first day of January of the year in which such exchange takes place: Provided, however, that if such exchange takes place on or after October 1 of such year, Article VI (except paragraph (2) thereof) and Article VII of the Convention shall have effect only for taxable years beginning on or after the first day of January of the year immediately following the year in which such exchange takes place.

(2) The present Convention shall continue effective for a period of five years beginning with the calendar year in which the exchange of the instruments of ratification takes place and indefinitely after that period, but may be terminated by either of the

contracting States at the end of the five-year period or at any time thereafter, provided that at least six months' prior notice of termination has been given and, in such event, the present Convention shall cease to be effective for the taxable years beginning on or after the first day of January next following the expiration of the six-month period.

Done at Washington, in duplicate, in the English and German languages, the two texts having equal authenticity, this 24th day of May, 1951.

For the President of the United States of America:

[SEAL]

DEAN ACHESON.

For the Swiss Federal Council:

[SEAL]

CHARLES BRUGGMANN.

PROCLAMATION BY THE PRESIDENT OF THE UNITED STATES DATED OCTOBER 1, 1951

\* \* \* \* \*

And whereas the Senate of the United States of America, by their resolution of September 17, 1951, two-thirds of the Senators present concurring therein, did advise and consent to the ratification of the aforesaid convention, subject to a reservation, as follows:

"The Government of the United States of America does not accept paragraph (4) of Article X of the Convention, relating to the profits or remuneration of public entertainers."

And whereas the text of the aforesaid reservation was communicated by the Government of the United States of America to the Government of the Swiss Confederation and the aforesaid reservation was accepted by the Government of the Swiss Confederation;

And whereas the aforesaid convention was duly ratified by the President of the United States of America on September 20, 1951, in pursuance of the aforesaid advice and consent of the Senate and subject to the aforesaid reservation, and the aforesaid convention was duly ratified on the part of the Swiss Confederation;

And whereas the respective instruments of ratification of the aforesaid convention were duly exchanged at Bern on September 27, 1951, and a protocol of exchange of instruments of ratification, in the English and French languages, was signed at that place and on that date by the respective Plenipotentiaries of the United States of America and the Swiss Confederation, the said protocol containing a statement that it is understood by the two Governments that the convention aforesaid, upon entry into force in accordance with its provisions, is modified in accordance with the aforesaid reservation,

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so that, in effect, paragraph (4) of Article X of the convention is deemed to be deleted;

And whereas, so far as appertains to an exchange of instruments of ratification prior to October 1 of any year, it is provided in Article XX of the aforesaid convention that upon the exchange of instruments of ratification the convention shall have effect for the taxable years beginning or [sic] or after the first day of January of the year in which such exchange takes place;

Now, therefore, be it known that I, Harry S. Truman, President of the United States of America, do hereby proclaim and make public the aforesaid convention to the end that the said convention and each and every article and clause thereof, subject to the aforesaid reservation, may be observed and fulfilled with good faith by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof.

\* \* \* \* \*

### § 509.102 Applicable provisions of law.

(a) *General.* The Internal Revenue Code of 1954 provides in part as follows:

#### SUBTITLE A—INCOME TAXES

\* \* \* \* \*

SEC. 894. *Income exempt under treaty.* Income of any kind, to the extent required by any treaty obligation of the United States, shall not be included in gross income and shall be exempt from taxation under this subtitle.

\* \* \* \* \*

#### SUBTITLE F—PROCEDURE AND ADMINISTRATION

\* \* \* \* \*

SEC. 7805. *Rules and regulations—(a) Authorization.* Except where such authority is expressly given by this title to any person other than an officer or employee of the Treasury Department, the Secretary or his delegate shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.

(b) *Retroactivity of regulations or rulings.* The Secretary or his delegate may prescribe the extent, if any, to which any ruling or regulation, relating to the internal revenue laws, shall be applied without retroactive effect.

\* \* \* \* \*

(b) *Internal Revenue Code of 1939.* Any reference in §§ 509.101 to 509.122 to any provision of the Internal Revenue Code of 1954 shall, where applicable, be deemed also to refer to the corresponding provision of the Internal Revenue Code of 1939.

(c) *Effective date of regulations.* Pursuant to sections 894 and 7805 of the Internal Revenue Code of 1954, Article XIX of the convention, and other provisions of the internal revenue laws, §§ 509.101 to 509.122 are hereby prescribed effective for taxable years beginning on or after January 1, 1951. All regulations inconsistent herewith are modified accordingly.

### § 509.103 Scope of the convention.

(a) *Purposes of convention.* The primary purposes of the convention, to be accomplished on a reciprocal basis, are to avoid double taxation upon certain items of income derived from sources in one country by residents or corporations or other entities of the other country and to provide for administrative cooperation between the competent tax authorities of the two countries looking to the avoidance of double taxation and the prevention of fiscal evasion.

(b) *Exemption from United States tax.* The following items of income from sources within the United States are exempt from United States tax for taxable years beginning on or after January 1, 1951, subject to the respective articles of the convention:

(1) Industrial and commercial profits of a Swiss enterprise having no permanent establishment in the United States (Article III);

(2) Income derived by a Swiss enterprise from the operation of ships or aircraft registered in Switzerland (Article V);

(3) Patent and copyright royalties, and other like amounts, including motion picture film rentals, derived by a nonresident alien who is a resident of Switzerland, or by a Swiss corporation or other entity, if such alien, corporation, or other entity has no permanent establishment in the United States (Article VIII);

(4) Compensation, subject to certain limitations, for personal services performed in the United States by a nonresident alien individual who is a resident of Switzerland (Article X);

(5) Compensation and pensions paid by Switzerland to an alien individual, and to a citizen of Switzerland who is also a citizen of the United States, including such items as are from sources without the United States (Article XI);

(6) Private pensions and life annuities paid to a nonresident alien individual who is a resident of Switzerland (Article XI);

(7) Remuneration derived from certain teaching in the United States by a professor or teacher who is a nonresident alien residing in Switzerland (Article XII); and

(8) Dividends and interest paid by a foreign corporation to a nonresident alien who is a resident of Switzerland, or to a Swiss corporation, if such alien or corporation has no permanent establishment in the United States (Article XIV).

(c) *Students or apprentices.* Remittances received from abroad for the purpose of maintenance or studies by a student or apprentice, a nonresident alien residing in Switzerland, who is temporarily present in the United States under specified circumstances are also exempt from United States tax (Article XIII).

(d) *Reduced rates of United States tax.* Dividends and interest derived from sources within the United States by a nonresident alien who is a resident of Switzerland, or by a Swiss corporation or other entity, are subject to United States tax at reduced rates, if such alien, corporation, or other entity has no permanent establishment in the United States (Articles VI and VII).

(e) *Withholding regulations.* For regulations pertaining to the release of excess tax withheld, and to exemption from, or reduction in the rate of, withholding of United States tax at source, in the case of dividends, interest, patent and copyright royalties, film rentals, private pensions, and life annuities, received from sources within the United States by a nonresident alien who is a resident of Switzerland, or by a Swiss corporation or other entity, see

Treasury Decision 5867, approved November 21, 1951 (§§ 509.1 to 509.10).

(f) *United States citizens, residents, and corporations.* (1) Any citizen of Switzerland who is a resident of the United States is liable to United States tax as though the convention had not come into effect; however, such alien resident of the United States is entitled to the foreign tax credit in accordance with Article XV and is also entitled to the benefits of Article XI (1) and Article XVIII.

(2) A citizen of the United States, even though resident in Switzerland, or a domestic corporation, even though engaged in trade or business in Switzerland through a permanent establishment situated therein, is also liable to United States tax as though the convention had not come into effect but is entitled to the foreign tax credit and, to the extent, applicable, to the benefits of Article XI (1).

(g) *Other provisions applicable to Swiss residents and corporations.* Except as otherwise expressly provided by the convention, the United States tax liability of a nonresident alien who is a resident of Switzerland, or of a Swiss corporation or other entity, is determined in accordance with the provisions of the Internal Revenue Code of 1954 relating to nonresident alien individuals and foreign corporations.

**EFFECTIVE DATE NOTE:** By T.D. 8734, 62 FR 53497, Oct. 14, 1997, § 509.103 was amended by removing and reserving paragraph (e), effective Jan. 1, 1999. By T.D. 8804, 63 FR 72183, Dec. 31, 1998, the effective date was delayed until Jan. 1, 2000.

#### § 509.104 Definitions.

(a) *General.* Any term defined in the convention or §§ 509.101 to 509.122 shall have the meaning so assigned to it; any term not so defined shall, unless the context otherwise requires, have the meaning which such term has under the internal revenue laws of the United States.

(b) *Specific terms.* As used in §§ 509.101 to 509.122—

(1) *United States tax.* The term “United States tax” means the Federal income taxes, including surtaxes and excess profits taxes, and any other income or profits tax of a substantially



similar character imposed by the United States after May 24, 1951.

(2) *Swiss tax*. The term “Swiss tax” means the federal, cantonal, and communal taxes on income—that is, on total income, earned income, income from property, industrial and commercial profits, etc.—and any other income or profits tax of a substantially similar character imposed by Switzerland after May 24, 1951.

(3) *United States*. The term “United States” means the United States of America; and, when used in a geographical sense, means the States, the Territories of Alaska and Hawaii, and the District of Columbia.

(4) *Switzerland*. The term “Switzerland” means the Swiss Confederation.

(5) *Permanent establishment*—(i) *Fixed place of business*. The term “permanent establishment” means an office, factory, workshop, warehouse, branch, or other fixed place of business, but does not include the casual and temporary use of merely storage facilities. It implies the active conduct of a business enterprise. The mere ownership, for example, of timberlands or a warehouse in the United States by a Swiss enterprise does not mean that such enterprise, in the absence of any business activity therein, has a permanent establishment in the United States. Moreover, the maintenance within the United States by a Swiss enterprise of a warehouse for convenience of delivery, and not for purposes of display, does not of itself constitute a permanent establishment in the United States, even though offers of purchase have been obtained by an agent therein of the Swiss enterprise and transmitted by him to the Swiss enterprise for acceptance. The fact that a Swiss enterprise maintains in the United States an office or other fixed place of business used exclusively for the purchase for such enterprise of goods or merchandise shall not of itself constitute such fixed place of business a permanent establishment of such enterprise.

(ii) *Subsidiary corporation*. The fact that a Swiss corporation has a domestic subsidiary corporation, or a foreign subsidiary corporation which is engaged in trade or business in the United States through a permanent establishment situated therein, does not

of itself constitute either subsidiary corporation the United States permanent establishment of the Swiss parent corporation.

(iii) *Agency*. A Swiss enterprise which has an agency in the United States does not thereby have a permanent establishment in the United States, unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or unless he has a stock of merchandise from which he regularly fills orders on its behalf. If the enterprise has an agent in the United States who has power to contract on its behalf, but only at fixed prices and under conditions determined by such principal, it does not thereby necessarily have a permanent establishment in the United States. The mere fact that an agent of a Swiss enterprise—assuming he has no general authority to negotiate and conclude contracts on behalf of his principal—maintains samples, or occasionally fills orders from incidental stocks of goods maintained, in the United States does not of itself mean that such enterprise has a permanent establishment in the United States. The mere fact that salesmen, employees of a Swiss enterprise, promote the sale of their employer's products in the United States or that a Swiss enterprise transacts business in the United States by means of mail order activities does not mean that such enterprise has a permanent establishment in the United States. A Swiss enterprise shall not be deemed to have a permanent establishment in the United States merely because it carries on business dealings in the United States through a commission agent, broker, custodian, or other independent agent, acting in the ordinary course of his business as such.

(6) *Enterprise*. The term “enterprise” means any commercial or industrial enterprise or undertaking carried on by any person, for example, by an individual partnership, or corporation. It includes such activities as manufacturing, merchandising, mining, processing, banking, and insuring. It does not include the rendition of personal services. Hence, a nonresident alien individual who is resident of Switzerland and who performs personal services is

not, merely by reason of such services, engaged in a Swiss enterprise within the meaning of the convention; consequently, his liability to United States tax is not determined under Article III of the convention, if he has not otherwise carried on a Swiss enterprise.

(7) *Swiss enterprise.* The term "Swiss enterprise" means an enterprise carried on in Switzerland by a nonresident alien individual who is a resident of Switzerland, or by a Swiss corporation or other entity. Thus, an enterprise carried on wholly outside Switzerland by a Swiss corporation is not a Swiss enterprise within the meaning of the convention.

(8) *Swiss corporation or other entity.* The term "Swiss corporation or other entity" means a corporation or institution or foundation having juridical personality, or a partnership (association "en nom collectif" or "en commandite"), or other association without juridical personality, created or organized under Swiss laws.

(9) *United States enterprise.* The term "United States enterprise" means an enterprise carried on in the United States by a resident of the United States (including an individual, fiduciary, and partnership) or by a United States corporation or other entity.

(10) *United States corporation or other entity.* The term "United States corporation or other entity" means a corporation or other entity created or organized under the law of the United States or of any State or Territory of the United States.

(11) *Industrial and commercial profits.* The term "industrial and commercial profits" means profits arising from industrial, commercial, mercantile, manufacturing, and like activities of an enterprise, including mining, financial and insurance profits. It does not include income in the form of dividends, interests, rents, royalties, or remuneration for personal services. In determining the industrial and commercial profits from sources within the United States of a Swiss enterprise, no profits shall be deemed to arise from the mere purchase of goods or merchandise within the United States by such enterprise. Moreover, in determining such profits of the United States permanent

establishment of such enterprise, there shall be allowed as deductions all expenses which are reasonably applicable to the permanent establishment, including executive and general administrative expenses so applicable. See sections 861 through 864, Internal Revenue Code of 1954, and the regulations thereunder.

(12) *Commissioner.* The term "Commissioner" means the Commissioner of Internal Revenue or his authorized representative.

(13) *Director of the Federal Tax Administration.* The term "Director of the Federal Tax Administration" means the Director of the Federal Tax Administration (Direktor der eidgenössischen Steuerverwaltung) of Switzerland.

#### **§ 509.105 Industrial and commercial profits.**

(a) *General.* (1) Article III of the convention adopts the principle that an enterprise of one of the contracting States shall not be taxable by the other contracting State upon its industrial and commercial profits unless it is engaged in trade or business in the latter State through a permanent establishment situated therein. Accordingly, a Swiss enterprise is subject to United States tax upon its industrial and commercial profits, to the extent of such profits from sources within the United States, only if it is engaged in trade or business in the United States at some time during the taxable year through a permanent establishment situated therein.

(2) From the standpoint of the United States tax the article has application only to a Swiss enterprise and its industrial and commercial profits from sources within the United States. Thus, a nonresident alien individual who is a citizen of Switzerland, or a Swiss corporation or other entity, carrying on an enterprise which is not Swiss, is subject to tax on such income of such enterprise pursuant to section 871(c) or section 882(a), Internal Revenue Code of 1954, if such alien, corporation, or other entity has engaged in trade or business in the United States at any time during the taxable

year, even though it has not had a permanent establishment therein at any time within such year.

(b) *No United States permanent establishment.* A Swiss enterprise is not subject to United States tax upon its industrial and commercial profits from sources within the United States, nor shall such profits be included in gross income, if it has not at any time during the taxable year engaged in trade or business in the United States through a permanent establishment situated therein. For example, if during the taxable year an enterprise carried on in Switzerland by a nonresident alien individual who is a resident of Switzerland, or by a Swiss corporation, were to sell merchandise, such as watches, dairy products, or liqueurs, in the United States through a commission agent or broker in the United States acting in the ordinary course of his business as such agent or broker, the profits arising from such sale would not be included in gross income and would be exempt from United States tax under Article III of the convention. Similarly, if during the taxable year such enterprise were to secure orders in the United States for such merchandise through its sales agents whose sole function in the United States is sales promotion, the orders being transmitted to Switzerland for acceptance, then the profits arising from such sales would not be included in gross income and would be exempt from United States tax.

(c) *United States permanent establishment—(1) General.* A Swiss enterprise is subject to United States tax upon its industrial and commercial profits from sources within the United States to the same extent as are nonresident aliens or foreign corporations which are subject to tax pursuant to section 871(c) or section 882(a), Internal Revenue Code of 1954, if such enterprise has at any time during the taxable year engaged in trade or business in the United States through a permanent establishment situated therein. If it is so engaged, it is subject to United States tax upon its entire income from sources within the United States except to the extent otherwise exempt from United States tax.

(2) *Allocation of profits.* In the determination of the income taxable to such enterprise for purposes of the United States tax, all industrial and commercial profits from sources within the United States shall be deemed to be allocable to the permanent establishment in the United States. Hence, if a Swiss enterprise which has a permanent establishment in the United States at some time during the taxable year were to sell in the United States, through a commission agent therein acting in the ordinary course of his business as such, merchandise which has been produced in Switzerland, the profits arising from such sale would be allocable to the permanent establishment to the extent they are derived from sources within the United States, even though the sale is made independently of the permanent establishment.

(3) *Independent basis.* The industrial and commercial profits of the permanent establishment in the United States shall be determined as if the establishment were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length, or on an independent basis, with the enterprise of which it is a permanent establishment.

#### **§ 509.106 Control of a United States enterprise by a Swiss enterprise.**

In effect, Article IV of the convention provides that, if a Swiss enterprise by reason of its control of a United States enterprise imposes on the latter enterprise conditions different from those which would result from normal business relations between independent enterprises, the accounts between the enterprises shall be adjusted in order to ascertain the true taxable income of each enterprise. The purpose is to place the controlled United States enterprise on a tax parity with an uncontrolled United States enterprise by determining, according to the standard of an uncontrolled enterprise, the true taxable income from the property and business of the controlled enterprise. The basic objective of the article is that, if the accounting records do not truly reflect the taxable income from the property and business of the United States enterprise, the Commissioner

shall intervene and, by making such distributions, apportionments, or allocations as he may deem necessary of gross income, deductions, credits, or allowances, or of any item or element affecting taxable income, between the United States enterprise and the Swiss enterprise by which it is controlled or directed, shall determine the true taxable income of the United States enterprise. The provisions of section 482 of the Internal Revenue Code of 1954, and the regulations thereunder, shall, insofar as applicable, be followed in the determination of the taxable income of the United States enterprise.

**§ 509.107 Income from operation of ships or aircraft.**

Under Article V of the convention so much of the income from sources within the United States of a Swiss enterprise as consists of earnings derived from the operation of ships or aircraft documented or registered in Switzerland shall not be included in gross income and shall be exempt from United States tax, even though at some time during the taxable year such enterprise has engaged in trade or business in the United States through a permanent establishment situated therein.

**§ 509.108 Dividends.**

(a) *General.* (1) The rate of United States tax imposed by the Internal Revenue Code of 1954 upon dividends derived from sources within the United States by a nonresident alien individual who is a resident of Switzerland, or by a Swiss corporation or other entity, shall not exceed 15 percent under the provisions of Article VI of the convention, if such alien, corporation, or other entity at no time during the taxable year in which such dividends are derived has a permanent establishment in the United States.

(2) If, for example, a nonresident alien individual who is a resident of Switzerland performs personal services within the United States during the taxable year, but has at no time during such year a permanent establishment within the United States, he is entitled to the reduced rate of tax with respect to dividends derived in that year from United States sources, as provided in Article VI of the convention, even

though under the provisions of section 871(c) of the Internal Revenue Code of 1954 he has engaged in trade or business within the United States during such year by reason of his having performed personal services therein.

(b) *Dividends paid by related corporation.* The rate of United States tax imposed by the Internal Revenue Code of 1954 upon dividends derived from sources within the United States by a Swiss corporation shall not exceed 5 percent under the provisions of Article VI (2) of the convention if:

(1) The Swiss corporation is a shareholder which controls, directly or indirectly, at the time the dividend is paid 95 percent or more of the entire voting power in the corporation paying the dividend;

(2) Not more than 25 percent of the gross income of the paying corporation for the three-year period immediately preceding the taxable year in which the dividend is paid consists of dividends and interest (other than dividends and interest received by such paying corporation from its own subsidiary corporations, if any);

(3) The relationship between the paying corporation and the Swiss corporation has not been arranged or maintained primarily with the intention of securing the reduced rate of 5 percent; and

(4) The Swiss corporation at no time during the taxable year in which such dividends are derived has a permanent establishment in the United States.

**§ 509.109 Interest.**

The rate of United States tax imposed by the Internal Revenue Code of 1954 upon interest on bonds, securities, notes, debentures, or on any other form of indebtedness, including interest on obligations of the United States, obligations of instrumentalities of the United States, and mortgages and bonds secured by real property, which is derived from sources within the United States by a nonresident alien individual who is a resident of Switzerland, or by a Swiss corporation or other entity, shall not exceed 5 percent under the provisions of Article VII of the convention, if such alien, corporation, or other entity at no time during the taxable year in which such interest

is derived has a permanent establishment in the United States.

**§ 509.110 Patent and copyright royalties and film rentals.**

Royalties and other amounts representing consideration for the right to use copyrights, artistic and scientific works, patents, designs, plans, secret processes and formulae, trademarks, and other like property and rights, including rentals and like payments in respect to motion picture films or for the use of industrial, commercial, or scientific equipment, which are derived from sources within the United States by a nonresident alien individual who is a resident of Switzerland, or by a Swiss corporation or other entity, are exempt from United States tax under the provisions of Article VIII of the convention if such alien, corporation, or other entity at no time during the taxable year in which such items of income are derived has a permanent establishment in the United States.

**§ 509.111 Real property income and natural resource royalties.**

(a) *General.* Income of whatever nature derived by a nonresident alien who is a resident of Switzerland, or by a Swiss corporation or other entity, from real property situated in the United States, including gains derived from the sale or exchange of such property, rentals from such property, and royalties in respect of the operation of mines, quarries, or other natural resources situated in the United States, is not exempt from United States tax by the convention. Such items of income are subject to taxation under the provisions of the Internal Revenue Code of 1954 generally applicable to the taxation of nonresident alien individuals and foreign corporations. See Article IX of the convention. Interest derived from mortgages and bonds secured by real property does not constitute income from real property for purposes of this section but is subject to the provisions applicable to interest generally. See § 509.109.

(b) *Net basis.*—(1) *General.* Notwithstanding the provisions of paragraph (a) of this section, a nonresident alien who is a resident of Switzerland, or a Swiss corporation or other entity, who

during the taxable year derives from sources within the United States any income from real property as described in such paragraph may elect for such taxable year to be subject to United States tax on a net basis as though such alien, corporation, or other entity were engaged in trade or business in the United States during such year through a permanent establishment situated therein.

(2) *Manner of electing.* Such nonresident alien (including an individual, fiduciary, and member of a partnership) shall signify his election to be subject to tax on such a basis by filing Form 104B clearly marked at the top of the first page thereof as follows: "Return of Resident of Switzerland Electing to File on a Net Basis Pursuant to Article IX of Swiss Income Tax Convention". Such corporation shall signify its election to be subject to tax on such a basis by filing Form 1120 clearly marked at the top of the first page thereof as follows: "Return of Swiss Corporation Electing to File on a Net Basis Pursuant to Article IX of Swiss Income Tax Convention". The election so signified shall be irrevocable for the taxable year for which such election is made. All income from sources within the United States, including gains from the sale or exchange of capital assets or of other property, shall be disclosed on the return so filed. See sections 871 and 882 of the Internal Revenue Code of 1954 and the regulations thereunder.

**§ 509.112 Compensation for labor or personal services.**

(a) *Exemption from tax.* Under Article X of the convention compensation received by a nonresident alien individual who is a resident of Switzerland for labor or personal services, including the practice of the liberal professions and the rendition of services as a director, performed in the United States shall not be included in gross income and shall be exempt from United States tax in either of the following situations:

(1) *Swiss employer.* Where such individual is temporarily present in the United States for a period or periods not exceeding in the aggregate a total of 183 days during a taxable year beginning on or after January 1, 1951, any

compensation received by him (irrespective of when received, if received in taxable years beginning on or after January 1, 1951) for such labor or personal services performed in the United States during such year as an employee of, or under contract with, a nonresident alien (including a nonresident alien individual and fiduciary) who is a resident of Switzerland, or a Swiss corporation or other entity, whether or not such alien, corporation, or other entity is engaged in trade or business within the United States, shall not be included in gross income and shall be exempt from United States tax.

(2) *Other employers.* Where such individual is temporarily present in the United States for a period or periods not exceeding in the aggregate a total of 183 days during a taxable year beginning on or after January 1, 1951, any compensation received by him (irrespective of when received, if received in taxable years beginning on or after January 1, 1951) for such labor or personal services performed in the United States during such year shall not be included in gross income and shall be exempt from United States tax if such compensation does not exceed \$10,000 in the aggregate. Thus, if a nonresident alien individual who is a resident of Switzerland performs personal services in the United States during the taxable year as an employee of a domestic corporation for which he receives compensation of \$15,000 in the aggregate, none of such compensation shall be exempt from United States tax even though such individual is present in the United States during such year for a period or periods not exceeding a total of 183 days, since the aggregate compensation received is in excess of \$10,000.

(b) *Definitions.* For purposes of this section, the term "compensation for labor or personal services" shall include, but shall not be limited to, the compensation, profits, emoluments, or other remuneration of public entertainers, such as, stage, motion picture, television, or radio artists, musicians, and athletes. For the allocation or segregation as between sources within, and sources without, the United States in the case of compensation for labor or personal services, see sections 861

through 864, Internal Revenue Code of 1954, and the regulations thereunder.

(c) *Exception.* The provisions of this section have no application to the income to which Article XI(1) of the convention relates.

#### **§ 509.113 Government wages, salaries, and pensions.**

(a) *General.* Under Article XI of the convention any wage, salary, or similar compensation, or any pension, paid by Switzerland or any agency or instrumentality thereof, or by any political subdivisions or other public authorities of Switzerland, to any alien individual (whether or not a resident of the United States) or to any individual who occupies the dual status of a citizen of the United States and a citizen of Switzerland shall not be included in gross income and shall be exempt from United States tax, even though at some time during the taxable year such individual has engaged in trade or business in the United States through a permanent establishment situated therein.

(b) *Definition.* As used in this section, the term "pensions" means periodic payments made in consideration for services rendered or by way of compensation for injuries received. Under Article XV(2) of the convention the exclusion from gross income, and exemption from United States tax, provided by this section shall not be denied despite the provisions of Article XV. See § 509.118.

(c) *Cross reference.* For the taxation generally of compensation of alien employees of foreign governments and the consequences of executing and filing the waiver provided for in section 247(b) of the Immigration and Nationality Act, see section 893 of the Internal Revenue Code of 1954 and the regulations thereunder.

#### **§ 509.114 Private pensions and life annuities.**

(a) *General.* Private pensions and life annuities derived from sources within the United States and paid to a nonresident alien individual who is a resident of Switzerland shall not be included in gross income and shall be exempt from United States tax, in accordance with Article XI of the convention, even though at some time during

the taxable year such individual has engaged in trade or business in the United States through a permanent establishment situated therein.

(b) *Definitions.* As used in this section, the term “pensions” means periodic payments made in consideration for services rendered or by way of compensation for injuries received; and the term “life annuities” means a stated sum payable periodically at stated times during life, or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration in money or money’s worth.

**§ 509.115 Visiting professors or teachers.**

(a) *General.* Pursuant to Article XII of the convention, a professor or teacher, a nonresident alien who is a resident of Switzerland, who temporarily visits the United States for the purpose of teaching for a period not exceeding two years at any university, college, school, or other educational institution situated within the United States shall, for a period not exceeding two years from the date of his initial arrival in the United States, be exempt from United States tax with respect to his remuneration earned in taxable years beginning on or after January 1, 1951, for such teaching during such period not in excess of two years.

(b) *More than two years.* The exemption granted by Article XII is applicable to remuneration earned during such part of the individual’s visit as does not exceed two years from the date of arrival even though the total period of his presence in the United States may extend beyond two years, provided that during such entire period he may be considered to be temporarily visiting the United States.

(c) *Residence.* Such exemption shall not apply to the remuneration of an alien who is a resident of the United States or who is not a resident of Switzerland.

(d) *Nonresidence presumed.* An individual who otherwise qualifies for the exemption from United States tax granted by Article XII shall, for a period of not more than two years immediately succeeding the date of his arrival within the United States for the

purpose of such teaching, be deemed to have the tax status of a nonresident alien in the absence of proof of his intention to remain indefinitely in the United States. See section 871 of the Internal Revenue Code of 1954 and the regulations thereunder.

**§ 509.116 Students or apprentices.**

(a) *General.* Under Article XIII of the convention, a student or apprentice, a nonresident alien who is a resident of Switzerland, who temporarily visits the United States exclusively for the purposes of study or for acquiring business or technical experience shall not include in gross income, and shall be exempt from United States tax with respect to, amounts derived by him in taxable years beginning on or after January 1, 1951, and received during such years from without the United States as remittances for the purposes of his maintenance or studies.

(b) *Residence.* The exemption shall not apply to remittances received by an alien who is a resident of the United States or who is not a resident of Switzerland.

**§ 509.117 Dividends and interest paid by a foreign corporation.**

(a) *General*—(1) *Dividends.* A dividend paid by a foreign corporation constitutes, in whole or in part, income from sources within the United States and is subject to tax by the United States when received by a nonresident alien individual or other foreign corporation, if 50 percent or more of the gross income of the paying corporation for the statutory period was derived from sources within the United States. See section 861(a)(2)(B), section 872(a), and section 882(b), Internal Revenue Code of 1954; and the regulations thereunder.

(2) *Interest.* Interest on bonds, notes, and other interest-bearing obligations of resident foreign corporations constitutes, in its entirety, income from sources within the United States and is subject to tax by the United States when received by a nonresident alien individual or other foreign corporation, if 20 percent or more of the gross income of the paying corporation for the statutory period was derived from sources within the United States. See

section 861(a)(1)(B), section 872(a), and section 882(b), Internal Revenue Code of 1954; and the regulations thereunder.

(b) *Exemption from United States tax.* Notwithstanding the provisions of paragraph (a) of this section, Article XIV(1) of the convention provides that dividends and interest paid by any foreign corporation and derived by a non-resident alien who is a resident of Switzerland, or by a Swiss corporation, shall not be included in gross income and shall be exempt from United States tax if such alien or corporation at no time during the taxable year in which such items of income are derived has a permanent establishment in the United States. The exemption so provided shall apply even though the corporation paying the dividends or interest is a resident foreign corporation at the time of payment and without regard to the percentage of its gross income from sources within the United States.

EFFECTIVE DATE NOTE: By T.D. 8734, 62 FR 53497, Oct. 14, 1997, § 509.117 was amended by removing and reserving paragraph (a), effective Jan. 1, 1999. By T.D. 8804, 63 FR 72183, Dec. 31, 1998, the effective date was delayed until Jan. 1, 2000.

**§ 509.118 Credit against United States tax for Swiss tax.**

(a) *General—(1) Taxable as though no convention.* Notwithstanding any other provision of the convention the United States, in determining the United States tax of a citizen or resident of the United States, or of a domestic corporation, may, under Article XV(1)(a) of the convention, include in the basis upon which such tax is imposed all items of income taxable under the revenue laws of the United States, as though the convention had not come into effect. For example, despite the exemption from United States tax granted by Article VIII of the convention with respect to a copyright royalty derived from sources within the United States by a resident of Switzerland, such royalty shall be included in gross income and is subject to United States tax when so derived by a resident of Switzerland who is a citizen of the United States, even though such resident has no permanent establishment in the United States.

(2) *Exception.* Notwithstanding the provisions of subparagraph (1) of this paragraph, the exclusion from gross income, and exemption from United States tax, granted by Article XI(1) of the convention with respect to wages, salaries, and similar compensation, and pensions, paid by Switzerland or any agency or instrumentality thereof, or by any political subdivisions or other public authorities of Switzerland, shall not be denied. See Article XV(2) of the convention.

(b) *Application of credit—(1) General.* For the purpose of mitigating double taxation, Article XV(1)(a) of the convention provides that a citizen or resident of the United States, or a domestic corporation, deriving income from sources within Switzerland shall be allowed a credit against the United States tax for the amount of Swiss tax paid or accrued during the taxable year. This credit shall be made in accordance with the provisions of section 131 of the Internal Revenue Code of 1939 as in effect on September 27, 1951, but subject to the provisions of Article XVIII(2) of the convention.

(2) *Similar credit requirement.* (i) Article XV(1)(a) further provides that, by virtue of the provisions of Article XV(1)(b) of the convention, relating to the exclusion from basis for computing the Swiss tax, Switzerland satisfies the similar credit requirement set forth in section 901(b)(3), Internal Revenue Code of 1954, relating to alien residents of the United States, etc.

(ii) This provision of Article XV(1)(a) shall be taken to mean that, solely by reason of the exclusion granted by it under Article XV(1)(b) and without reference to concessions otherwise made by such country, Switzerland satisfies the similar credit requirement only with respect to taxes paid to Switzerland, and not with respect to taxes paid to another foreign country. Nothing in this subdivision shall be construed, however, to prevent Switzerland from otherwise satisfying the similar credit requirement, in accordance with section 901 of the Internal Revenue Code of 1954 and the regulations thereunder, with respect to taxes paid to another foreign country. Thus, if pursuant to a convention between Switzerland and another foreign country, Switzerland



were to exempt from its income taxes the income received from sources within such other foreign country by a United States citizen residing in Switzerland, then Switzerland would, in accordance with such regulations under section 901, satisfy the similar credit requirement of section 901(b)(3) with respect to income taxes paid to such other country by a Swiss citizen residing in the United States.

**§ 509.119 Exchange of information.**

(a) *General.* (1) By Article XVI of the convention the United States and Switzerland adopt the principle of exchange of such information as is necessary for carrying out the provisions of the convention, preventing fraud, or detecting practices which are aimed at the reduction of the revenues of either country, but not including information which would be contrary to public policy or which would disclose any trade, business, industrial, or professional secret or any trade process.

(2) The information and correspondence relative to exchange of information may be transmitted directly by the Commissioner to the Director of the Federal Tax Administration.

(b) *Return of information by withholding agents.* (1) To facilitate compliance with Article XVI of the convention, every United States withholding agent shall make and file in duplicate with the District Director of Internal Revenue, Baltimore 2, Maryland, an information return on Form 1042 Supplement, with respect to persons having addresses in Switzerland, which shall be filed for the calendar year 1955 and subsequent calendar years. This return shall be filed simultaneously with Form 1042.

(2) There shall be reported on such Form 1042 Supplement all items of fixed or determinable annual or periodical income (and amounts described in section 402(a)(2), section 631(b) and (c), and section 1235 of the Internal Revenue Code of 1954, which are considered to be gains from the sale or exchange of capital assets) derived from sources within the United States and paid to nonresident aliens (including nonresident alien individuals, fiduciaries, and partnerships) and to nonresident foreign corporations, whose

addresses at the time of payment were in Switzerland, including such items of income upon which, in accordance with the withholding regulations under the convention, no withholding of United States tax is required; except that any of such items which constitute interest in respect of which Form 1001-S or substitute Form 1001-S has been filed in duplicate with the withholding agent is not required to be reported on such Form 1042 Supplement.

(c) *Information to be furnished in ordinary course.* In compliance with the provisions of Article XVI of the convention the Commissioner will transmit to the Director of the Federal Tax Administration, as soon as practicable after the close of the calendar year 1955 and of each subsequent calendar year during which the convention is in effect, the following information relating to such preceding calendar year:

(1) The duplicate copy of each available Form 1042 Supplement filed pursuant to paragraph (b) of this section; and

(2) The duplicate copy of each available ownership certificate, Form 1001-S, and substitute Form 1001-S, filed pursuant to the withholding regulations under the convention, in connection with coupon bond interest.

(d) *Information in specific cases.* Under the provisions and limitations of Article XVI of the convention and upon request of the Director of the Federal Tax Administration, the Commissioner shall furnish to the Director information available to, or obtainable by, the Commissioner relative to the tax liability of any person under the revenue laws of Switzerland in any case in which such information is necessary for carrying out the provisions of the convention or for the prevention of fraud or the like in relation to the taxes which are the subject of the convention.

EFFECTIVE DATE NOTE: By T.D. 8734, 62 FR 53497, Oct. 14, 1997, § 509.119 was removed, effective Jan. 1, 1999. By T.D. 8804, 63 FR 72183, Dec. 31, 1998, the effective date was delayed until Jan. 1, 2000.

**§ 509.120 Double taxation claims.**

(a) *General.* Under Article XVII of the convention, where the taxpayer shows

proof that the action of the tax authorities of the United States or Switzerland has resulted, or will result, in double taxation contrary to the provisions of the convention, he is entitled to present the facts to the country of which he is a citizen; or, if he is not a citizen of either country, to the country of which he is a resident; or, if the taxpayer is a corporation or other entity, to the country in which it is created or organized. The article provides that, should the taxpayer's claim be deemed worthy of consideration, the competent authority of the country to which the facts are presented shall undertake to come to an agreement with the competent authority of the other country with a view to equitable avoidance of the double taxation in question.

(b) *Manner of filing claim.* Such a claim on behalf of a United States citizen, corporation, or other entity, or on behalf of a resident of the United States who is not a Swiss citizen, shall be filed with the Commissioner. The claim shall be set up in the form of a letter addressed to "The Commissioner of Internal Revenue, Washington, D.C." and shall show fully all facts and laws on the basis of which the claimant alleges that such double taxation has resulted or will result. If the Commissioner determines that there is an appropriate basis for the claim under the convention, he shall take up the matter with the Director of the Federal Tax Administration with a view to arranging an agreement of the character contemplated by Article XVII.

**§ 509.121 Beneficiaries of an estate or trust.**

(a) *Qualified beneficiary.* If he otherwise satisfies the requirements of the respective articles concerned, a nonresident alien who is a resident of Switzerland and who is a beneficiary of an estate or trust shall be entitled to the exemption from, or reduction in the rate of, United States tax granted by Articles VI, VII, VIII, and XIV of the convention with respect to dividends, interest, and royalties and other like amounts, to the extent that (1) any amount paid, credited, or required to be distributed by such estate or trust to such beneficiary is deemed to

consist of such items and (2) such items would, without regard to the convention, be includible in his gross income.

(b) *Amounts otherwise includible in gross income of beneficiary.* For the determination of amounts which, without regard to the convention, are includible in the gross income of the beneficiary, see subchapter J of chapter 1 of the Internal Revenue Code of 1954, and the regulations thereunder.

**§ 509.122 Swiss partnerships.**

(a) *General.* Whether an individual, corporation, or other entity, a member of a partnership created or organized under Swiss laws, is subject to United States tax upon such person's distributive share of the income of such partnership depends upon both the status of the partnership and the status of such member.

(b) *Citizen partner.* A citizen or resident of the United States, or a domestic corporation, is subject to United States tax upon such person's distributive share of the income of such partnership as though the convention had not come into effect, but subject to the provisions of § 509.118; even though other members, by reason of benefits granted by the convention, are not subject to United States tax upon their distributive share of such income.

(c) *Noncitizen partner.* In any case in which income is derived from sources within the United States by a partnership created or organized under Swiss laws, any member of such partnership who has a permanent establishment in the United States or who is either a nonresident alien not a resident of Switzerland or is a foreign corporation which is not Swiss is not entitled, with respect to such member's distributive share of such income, to any benefit granted by the convention solely to nonresident aliens residing in Switzerland, or to Swiss corporations or other entities, having no permanent establishment in the United States. Conversely, any member of such partnership who individually complies with the requirements for obtaining any such benefit will be entitled thereto with respect to such member's distributive share of such income. A member of a Swiss partnership which has a permanent establishment in the United

States shall likewise be considered to have a permanent establishment in the United States.

EFFECTIVE DATE NOTE: By T.D. 8734, 62 FR 53497, Oct. 14, 1997, § 509.122 was removed, effective Jan. 1, 1999. By T.D. 8804, 63 FR 72183, Dec. 31, 1998, the effective date was delayed until Jan. 1, 2000.

## PARTS 510-512 [RESERVED]

### PART 513—Ireland

#### Subpart—Withholding of Tax

Sec.

513.1 Introductory.

513.2 Dividends.

513.3 Interest.

513.4 Patent and copyright royalties and film rentals.

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513.7 Release of excess tax withheld at source.

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513.9 Information to be furnished in ordinary course.

513.10 Beneficiaries of a domestic estate or trust.

513.11 Refund of income tax withheld during 1951.

AUTHORITY: 26 U.S.C. 62.

SOURCE: Treasury Decision 5897, 17 FR 3633, Apr. 24, 1952, unless otherwise noted. Redesignated at 25 FR 14022, Dec. 31, 1960.

#### Subpart—Withholding of Tax

##### § 513.1 Introductory.

(a) The income tax convention between the United States and the Republic of Ireland, signed September 13, 1949, proclaimed by the President of the United States on December 24, 1951, and effective (as respects the United States tax) for taxable years beginning on or after January 1, 1951, referred to in this subpart as the convention, provides in part as follows:

#### ARTICLE I

(1) The taxes which are the subject of the present Convention are:

(a) In the United States of America: The Federal income taxes, including surtaxes (hereinafter referred to as United States tax).

(b) In Ireland: The income tax (including surtax) and the corporation profits tax (hereinafter referred to as Irish tax).

(2) The present Convention shall also apply to any other taxes of a substantially similar character imposed by either Contracting Party subsequently to the date of signature of the present Convention.

#### ARTICLE II

(1) In the present Convention, unless the context otherwise requires—

(a) The term “United States” means the United States of America, and when used in a geographical sense means the States, the Territories of Alaska and of Hawaii, and the District of Columbia.

(b) The term “Ireland” means the Republic of Ireland and the term “Irish” has a corresponding meaning.

(c) The terms “territory of one of the Contracting Parties” and “territory of the other Contracting Party” mean the United States or Ireland as the context requires.

(d) The term “United States corporation” means a corporation, association or other like entity created or organized in or under the laws of the United States.

(e) The term “Irish corporation” means any kind of juridical person created under the laws of Ireland.

(f) The terms “corporation of one Contracting Party” and “corporation of the other Contracting Party” mean a United States corporation or an Irish corporation as the context requires.

(g) The term “resident of Ireland” means any person (other than a citizen of the United States or a United States corporation) who is resident in Ireland for the purposes of Irish tax and not resident in the United States for the purposes of United States tax. A corporation is to be regarded as resident in Ireland if its business is managed and controlled in Ireland.

(h) The term “resident of the United States” means any individual who is resident in the United States for the purposes of United States tax and not resident in Ireland for the purposes of Irish tax, and any United States corporation and any partnership created or organized in or under the laws of the United States, being a corporation or partnership which is not resident in Ireland for the purposes of Irish tax.

(i) The term “Irish enterprise” means an industrial or commercial enterprise or undertaking carried on by a resident of Ireland.

(j) The term “United States enterprise” means an industrial or commercial enterprise or undertaking carried on by a resident of the United States.

(k) The terms “enterprise of one of the Contracting Parties” and “enterprise of the